

IN THE IOWA DISTRICT COURT IN AND FOR WARREN COUNTY

STATE OF IOWA, ex rel., THOMAS J.
MILLER, ATTORNEY GENERAL OF IOWA
(99AG23112),

Plaintiff,

vs.

GREG COALBANK,

Defendant.

LAW NO. CV28419

**CONSENT ORDER,
JUDGMENT AND DECREE**

[Filed 9-12-05]

NOW on this 12th day of Sept, 2005, the Court is presented with the plaintiff's petition seeking civil penalties and injunctive relief pursuant to Iowa Code sections 480.6(1)(a) and 480.7. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.

2. Defendant Greg Coalbank admits the violations alleged in the Petition at Law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant Greg Coalbank is assessed a civil penalty of Five Thousand and no/100 Dollars (\$5,000.00) for the violations alleged in the petition. The defendant shall pay the civil penalty within ten (10) days of the entry of this Consent Order, Judgment and Decree. The defendant shall also pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance. Payments of the civil penalty and interest shall be made to the Clerk of the Iowa District Court for Warren County.


2. Defendant Greg Coalbank and all other persons, corporations and other entities acting in concert or participating with the defendant who have actual or constructive notice of this injunction, are permanently enjoined from further violations of Iowa Code section 480.5 and, in the event of damage to an underground facility shall:

- a. notify the operators of the damaged underground facility as soon as practical of the damage, the type of damaged facility, and the extent of the damage;
- b. refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise; and
- c. in the event the damage creates an emergency as defined in Iowa Code section 480.1(3), take all reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area, leave all equipment situated where the emergency was at the time the emergency was created, and immediately contact the operator and appropriate authorities and necessary emergency response agencies.

3. The Court retains jurisdiction of this matter to insure compliance with the terms of this Order.

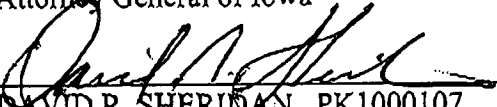
4. The costs of this action are taxed to the defendant in the amount of \$ 124.⁰⁰

(Clerk to enter).




SHERMAN W. PHIPPS
JUDGE, Fifth Judicial District of Iowa

Approved as to form:

THOMAS J. MILLER
Attorney General of Iowa


DAVID R. SHERIDAN, PK1000107

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[Lawsuit filed 12-30-04]

IN THE IOWA DISTRICT COURT IN AND FOR WARREN COUNTY

STATE OF IOWA, ex rel., THOMAS J.
MILLER, ATTORNEY GENERAL OF IOWA
(99AG23112),

Plaintiff,

vs.

GREG COALBANK,

Defendant.

LAW NO.

CV 28419

PETITION AT LAW

Clerk of District Court
WARREN COUNTY, IOWA

2004 DEC 30 AM 11:06

RECEIVED
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COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for claim against Defendant Greg Coalbank, states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Greg Coalbank (hereafter "Coalbank"), for violations of the "Iowa One Call" statute, Iowa Code chapter 480. The violations arose when Coalbank severed a natural gas pipeline at a residence in Hartford, Warren County, Iowa, and then attempted a crude patch of the pipeline, backfilled over the pipeline, and left the site without notifying the utility of the damage or taking other appropriate action.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.
4. Defendant Greg Coalbank resides at 1188 McKimber Street, Knoxville, Iowa, and is the owner and operator of a construction business.

Definitions

5. “Damage” means “any impact with, destruction, impairment, or penetration of, or removal of support from an underground facility, including damage to its protective coating, housing, or device.” Iowa Code § 480.1(2).

6. “Emergency” means “a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property.” Iowa Code § 480.1(3).

7. “Excavation” means “an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, auguring, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures.” Iowa Code § 480.1(4).

8. “Excavator” means “a person proposing to engage or engaging in excavation.” Iowa Code § 480.1(5).

9. “Operator” means “a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property.” Iowa Code § 480.1(8).

10. “Underground facility” means an “item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits,

cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties.” Iowa Code § 480.1(10).

Jurisdiction

11. Iowa Code chapter 480, commonly referred to as the “Iowa One Call” statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

12. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

13. An excavator shall as soon as practical notify the operator when any damage occurs to an underground facility as a result of an excavation. The notice shall include the type of facility damaged and the extent of the damage. Iowa Code § 480.5.

14. If damage occurs, an excavator shall refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. Iowa Code § 480.5.

15. If the damage results in an emergency, the excavator shall take all reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area. The excavator shall leave all equipment situated where the emergency was at the time the emergency was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies. Iowa Code § 480.5.

16. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed ten thousand dollars for each violation for each day the violation continues, up to a maximum of five hundred thousand dollars.

17. Iowa Code section 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

18. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

Facts

19. On or about March 24, 2003, Greg Coalbank commenced an excavation to install a telephone line at a residential property, 211 Hammond Street, Hartford, Warren County, Iowa.

20. MidAmerican Energy Company (hereafter "MidAmerican") owns and operates a ½-inch diameter buried natural gas pipeline providing natural gas service to the house located at 211 Hammond Street, Hartford, Iowa. MidAmerican had located and marked the location of its natural gas pipeline on or about March 20, 2003.

21. During the excavation, Coalbank's equipment hit and severed the MidAmerican natural gas pipeline causing the release of natural gas. Coalbank did not notify MidAmerican or anyone else of the damage to the natural gas pipeline. Coalbank attempted to patch or rejoin the severed natural gas pipeline with tape, tubing, and two hose clamps. The area was then backfilled with soil and Coalbank left the site.

22. On or about May 19, 2003, MidAmerican conducted a leak survey and determined that there was a natural gas leak from the natural gas pipeline serving the house at 211

Hammond, Hartford. MidAmerican investigated and determined that the natural gas pipeline had previously been severed and crudely patched which was the cause of the natural gas leak. Using a combustible gas indicator at the location of the pipeline break, MidAmerican recorded 3% methane in air (equivalent to 60% of the lower explosive limit).

Violations

23. Use of equipment to install a buried telephone line constitutes an “excavation” as defined in Iowa Code section 480.1(4).

24. At all material times hereto, Greg Coalbank was an “excavator” as defined in Iowa Code section 480.1(5).

25. A buried natural gas pipeline is an “underground facility” as defined in Iowa Code section 480.1(10).

26. Severing a natural gas pipeline constitutes “damage” as defined in Iowa Code section 480.1(2).

27. On or about March 24, 2003, Defendant Greg Coalbank damaged a natural gas pipeline owned by MidAmerican providing natural gas to the house located at 211 Hammond Street, Hartford, Iowa, and failed to notify MidAmerican of the damage, in violation of Iowa Code sections 480.1A and 480.5.

28. On or about March 24, 2003, Defendant Greg Coalbank damaged a natural gas pipeline owned and operated by MidAmerican providing natural gas to a house located at 211 Hammond Street, Hartford, Iowa, and failed to refrain from backfilling in the immediate area of the underground facilities until the damage had been investigated by the operator, in violation of Iowa Code sections 480.1A and 480.5.

29. On or about March 24, 2003, Defendant Greg Coalbank damaged a natural gas pipeline owned and operated by MidAmerican providing natural gas to a house located at 211 Hammond Street, Hartford, Iowa, creating an emergency as defined in Iowa Code section 480.1(3), and failed to take all reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area, leave all equipment situated where the emergency was at the time the emergency was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies, in violation of Iowa Code sections 480.1A and 480.5.

Prayer for Relief

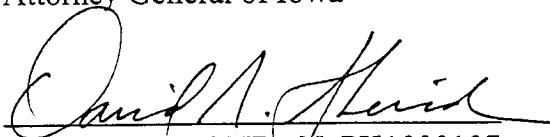
WHEREFORE, Plaintiff State of Iowa, ex rel, Thomas J. Miller, Attorney General of Iowa, requests that the Court:

- a. assess a civil penalty against Defendant Greg Coalbank pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A and 480.5, not to exceed ten thousand dollars (\$10,000.00) for each day of each such violation; and
- b. issue a permanent injunction enjoining Defendant Greg Coalbank from further violations of Iowa Code sections 480.1A and 480.5 and requiring the defendant, in the event of damage to underground facilities during an excavation, to:
 - (1) notify the operators of the damaged underground facility as soon as practical of the damage, the type of damaged facility, and the extent of the damage;
 - (2) refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise; and
 - (3) in the event the damage creates an emergency as defined in Iowa Code section 480.1(3), take all reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area, leave all equipment situated where the emergency was at the time the emergency was created, and immediately contact the operator and appropriate authorities and necessary emergency response agencies.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

A handwritten signature in black ink, appearing to read "David R. Sheridan", is written over a horizontal line.

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